

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 264 OF 1994

1. Mrs. Kalpana Dadaso Kadam
2. Kum. Harissheb Dadaso Kadam
3. Kum. Swati Dadaso Kadam
4. Mrs. Laxmi Pandurang Kadam
5. Pandurang Hari Kadam ..Appellants

versus

1. Vasant Govind Patil
2. Arun Ramchandra Savadikar
3. The New India Assurance
Company, Sangli ..Respondents

Mr. H. G. Wakshe i/b. P. A. Pol for the Appellants.

Mr. M. A. Patil for the Respondent No.1.

Mr. D. R. Mahadik i/b. S. R. Singh for the
Respondent No.3.

CORAM : D. G. DESHPANDE, J.

DATE : 4TH FEBRUARY, 2005

ORAL ORDER :

1. Heard counsel for the appellants and the respondents.

2. This appeal is filed by the original claimant for enhancement of compensation in an accident that occurred between a jeep and the truck. The driver of the jeep died on the spot along with others. Five Claim petitions came to be filed. Those claim petitions were decided by a common order dated 19.6.1991.

3. The age of driver was 35 years. His heirs were granted Rs.1,20,000/-. This Appeal is for enhancement on the ground that income was not properly calculated. Counsel for the Insurance company and the truck owner contended that when the income was from agriculture and the land was inherited by the claimants they cannot be held that they were deprived of the income because of the death of the driver. In this regard Counsel for the Insurance Company relied upon Judgment of Supreme Court reported in **(2003) 7 Supreme Court Cases 484 State of Haryana and Anr. vs. Jasbir Kaur and Ors.**

4. On the other hand counsel for the appellants contended that when there was evidence on record that the deceased was also having additional earning by giving out his tractor on hire and when documentary evidence in that regard was produced, the Tribunal should not have taken Rs.15,000/- as total income from both the sources, namely,

agricultural and income from tractor. Further, he contended that deduction of Rs.5,000/- for expenses of the agricultural land, and then considering Rs.7,200/- per year as the loss of the family was not proper and justified. He also contended that it may be that the legal heirs inherited the land but at the time of accident and the claim petition the daughter was three years of age and other daughter was about one year of age. The mother - claimant No.1 was of 22 years of age and therefore the land would have been of no use for a period of 4-5 years because it would have been difficult for the mother to get the land cultivated, through some one else.

5. It is true that on the basis of the judgment of the Supreme Court, referred to above, there cannot be a permanent loss of income. However, since the Tribunal has awarded Rs.1,20,000/- i.e. out of which Rs.1,08,000/- towards loss from income and Rs.12,000/- on account of loss of love affection and consortium. In my opinion, considering the age of the claimant, and also considering the limited liability of the insurance company to the extent of Rs.1,50,000/-, the claimant could be additionally compensated for Rs.30,000/=. Counsel for the insurance company contended that if at all the court is going to increase the compensation by Rs.30,000/- then interest should not be more than 6% per annum.

Counsel for the claimants - appellants agreed that the appellants would abide by the order of the court. Hence, order :

ORDER

. Appeal is partly allowed. Compensation awarded to the claimants is increased by Rs.30,000/- with interest at the rate 6% per annum from the date of the impugned order dated 19.6.1991. No order as to costs.

4.2.2005

(D.G. DESHPANDE, J.)